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F A C S I M I L E

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DATE: July 2, 2009

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Board of Patent Appeals and Interferences	U.S. Patent and Trademark Office	Alexandria, VA	571-272-9797	571-273-0052

FROM: George T. Marcou

110383

Our Ref. #: 14690/105089

NUMBER OF PAGES (Including Cover Page): 36

MESSAGE:

Information Disclosure Statement Transmittal; Form PTO-1449; Copy of Decision and Minutes of Oral Proceedings from Opposition Division, European Patent Office, for European Patent No. EP-B-1107198.

Serial No. 09/728,471

Appeal No. 2009-4350

Filed: November 30, 2000

Inventor: Alan YOUNG, et al.

Docket No. CITI0207

Please check that all pages are received. In case of problems, please call **TERRY GOAD** at **202-626-8988**.

All return telecopy messages should be sent to **(202) 626-3737**. Thank you.

Docket No. CITI0207

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

Alan YOUNG et al.

Serial No.: 09/728,471

Group Art Unit: 3173

Appeal No.: 2009-4350

Examiner: Mussa A. Shaawat

Filed: November 30, 2000

For: **SYSTEM AND METHOD FOR PERFORMING AN ELECTRONIC
TRANSACTION USING A TRANSACTION PROXY WITH AN
ELECTRONIC WALLET**

**INFORMATION DISCLOSURE STATEMENT
UNDER 37 C.F.R. §§ 1.97 AND 1.98**

***ELECTRONICALLY FILED AND SENT VIA FACSIMILE TO THE
BOARD OF PATENT APPEALS AND INTERFERENCES***

U.S. Patent and Trademark Office
Customer Window, Mail Stop Amendment
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Sir:

In accordance with the requirements of 37 C.F.R. §§ 1.56, 1.97-1.98 and MPEP § 609,
the references noted on the attached Form PTO-1449 are hereby brought to the attention of the
Examiner.

No fees are believed to be necessary since the reference cited in this statement was issued
by a foreign patent office (the Opposition Division, European Patent Office) in a counterpart
foreign patent not more than three months prior to the filing of the Supplemental Information

U.S. Serial No.: 09/728,471
Appeal No. 2009-4350
Information Disclosure Statement

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Docket No. CITI0207

Disclosure Statement. However, the Commissioner is hereby authorized to charge any additional fees which may be required, or to credit any overpayment, to Deposit Account No. 50-4402.

The above information is presented so that the United States Patent and Trademark Office may, in the first instance, determine any materiality thereof to the claimed invention. See 37 C.F.R. §§ 1.104(a) conferring the PTO duty to consider and use any such information. It is respectfully requested that the information be expressly considered during the prosecution of this application, and that the references be made of record therein and appear among the "References Cited" on any patent to issue therefrom.

Respectfully submitted,

Date: July 2, 2009

By: /George T. Marcou, Reg. No. 33,014/
George T. Marcou
Registration No. 33,014

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14690/105089
Doc. No. 1217787

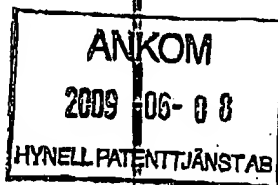
Form PTO-1449 (Rev. 2-32)		U.S. Department of Commerce Patent & Trademark Office		Atty. Docket No. CITI0207		Serial No. 09/728,471	
INFORMATION DISCLOSURE STATEMENT (Use several sheets if necessary)				Applicant Alan YOUNG, et al.			
				Filing Date November 30, 2000		Group 3627	
FOREIGN PATENT DOCUMENTS							
		WO 00/67218	11/9/00	The Chase Manhattan Bank	G07F	19/00	5/2/00
		EP 0 986 275	3/15/00	Swisscom AG	G06Q	20/00	7/16/99
		WO 99/67938	12/29/99	Swisscom AG	G06Q	20/00	6/23/98
		WO 99/66705	12/23/99	Societe Francaise Du Radiotelephone	H04L	29/06	6/15/99
		EP 0 926 611	6/30/99	AT&T Corp.	G06F	17/60	12/17/98
		WO 99/24892	5/20/99	Citicorp Development Center, Inc.	G06F	20/00	11/12/98
		EP 0 917 119	5/19/99	Citicorp Development Center, Inc.	G07F	19/00	11/9/98
		WO 98/47116	10/22/98	Telefonaktiebolaget LM Ericsson	G07F	19/00	4/15/98
		WO 97/45814	12/4/97	Vazvan	G07F	7/08	5/26/97
		WO 96/13814	5/9/96	Vazvan	G07F	7/08	10/25/95
OTHER DOCUMENTS (Including Author, Title, Date, Pertinent Pages, Etc.)							
		Decision by Opposition Division, European Patent Office for European Patent No. EP-B-1107198, dated June 3, 2009, 14 pp.					
		Minutes of Oral Proceedings Before the Opposition Division, European Patent Office, Held on May 13, 2009 for European Patent No. EP-B-1107198, dated June 3, 2009, 18 pp.					
EXAMINER							
DATE CONSIDERED							
EXAMINER: Initial if citation considered, whether or not citation is in conformance with MPEP 609; draw line through citation if not in conformance and not considered. Include copy of this form with next communication.							



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Application No. / Patent No. 00 204 234.9 - 2211 / 1107198 /	Ref. F284-099	Date 03.06.2009
Proprietor CITIBANK, NA		

Decision revoking the European Patent (Art. 101(2) and 101(3)(b) EPC)

The Opposition Division - at the oral proceedings dated 13.05.2009 - has decided:

European Patent No. EP-B- 1107198 is revoked.

The reasons for the decision are enclosed.

Possibility of appeal

This decision is open to appeal. Attention is drawn to the attached text of Articles 106 to 108 and Rules 97 to 98 EPC.

Opposition Division:

Date 03.06.2009

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Chairman:
2nd Examiner:
1st Examiner:

Krischer, Stefan
Königer, Axel
Milasinovic, Goran



Beuschel, Helene
Formalities Officer
Tel. No.: +49 89 2399-2971

Enclosure(s): 10 page(s) reasons for the decision (Form 2916)
Wording of Articles 106 - 108 and Rules 97-98 EPC (Form 2019)

to EPO postal service: 28.05.09

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Date 03.06.2009

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Anmelde-Nr.:
Application No.:
Demande n°: 00 204 234.9

Summary of Facts and Submissions

I. European patent no. 1 107 198 entitled

"System and method for performing an electronic transaction using a transaction proxy with an electronic wallet"

is based upon European patent application no. 00204234.9 filed on 29.11.2000 claiming the priority date 30.11.1999 from the US patent application serial no. 168031 and the priority date 18.05.2000 from US patent application serial no. 205318. The grant of the patent was published in European Patent Bulletin 2007/02 of 10.01.2007. Proprietor of the patent is

CITIBANK, NA
New York,
New York 10022 (US)

II. A notice of opposition was filed on 10.10.2007 in the name of

Swisscom Mobile AG,
CH-3050 Bern

The opponent requested that the patent be revoked in its entirety in accordance with Article 100 (a) and (c) on the following grounds:

- the application didn't fulfil the requirements of Article 123(2) EPC.
- its subject-matter did not involve an inventive step (Article 56 EPC).

The following evidence was submitted:

- D1: WO 99/66705(SFR) 23 December 1999 (1999-12-23)
- D2: WO 99/24892(CITICORP) 20 May 1999 (1999-05-20)
- D3: WO 99/67938 A1 (SWISSCOM AG) 29 December 1999 (1999-12-29)
- D4: EP-A1-0 986 275 (SWISSCOM AG) 15 March 2000 (2000-03-15)
- D5: WO 98/47116 (ERICSSON) 22 October 1998 (1998-10-22)
- D6: WO 97/45814 (VAZVAN BEHRUZ) 4 December 1997 (1997-12-04)
- D7: WO 96/13814 (VAZVAN) 9 May 2000 (2000-05-09)
- D8: EP 0 926 611 (AT&T) 30 June 1999 (1999-06-30)
- D9: EP 0 917 119 (CITICORP DEV CENTER INC) 19 May 1999 (1999-05-19)

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- D10: WO 00/67218 (THE CHASE MANHATTAN BANK) 9 November 2000 (2000-11-09)
- D11: Priority Document US 168 031 (CITIBANK) 30 November 1999 (1999-11-30)
- D12: Priority Document US 205 318 (CITIBANK) 18 May 2000 (2000-05-18)
- D13: EP-A2-1 107 198 (CITIBANK NA) 13 June 2001 (2001-06-13)

The opponent argued that both priorities cannot be claimed for the following reasons:

- D11 doesn't hint to a method involving a mobile telephone apparatus.
- D12 doesn't disclose that *payment authorization data* comprises *purchaser id data* and *merchant id data*.

Furthermore, claims 1, 5, 6, 7, 18, 21, 23-27 and 32 did contain amendments which contravene Article 123(2) EPC.

With regard to inventive step (Article 56 EPC), the opponent stated that D1 (figure 1) disclosed a system comprising:

- delivery of product information data to a communication device using a product database over a wireless communication network; the wireless communication network being coupled to a transaction portal server (page 14, line 8-27).
- it appeared that the features "*electronic wallet server*" (disclosed in D2) and "*payment authorisation*" were known before the filing date.

Further arguments on inventiveness provided by the opponent were:

- additionally to D1 and D2, document D3 disclosed the feature "*transmission of order information to the order fulfilment system at the merchant server by the transaction portal server*" (page 11, line 16-20).
- the combination of D1 and D2 anticipated the subject-matter of claim 1.
- the subject-matter of claim 1 was a mere aggregation of well-known practises and therefore not inventive.
- furthermore, it appeared to be questionable whether such features of claim 1 as "*product offered for purchase from a merchant, shipping detail data, order fulfilment system, payment option data, payment authorization data*" had a technical character.

The dependent claims were either trivial or did not comprise further technical features.

- III. Conversely, in his letter, dated 29.08.2008, the patentee argued that the priority of the opposed patent was valid (item 2 of the letter of reply) and that the opposed

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patent did not contravene Article 123(2) EPC (item 3 of the letter of reply) and that it fulfilled the requirements of Articles 52(1), 54 and 56 EPC (item 4 of the letter of reply).

Therefore, the patentee requested that the patent be maintained in un-amended form.

- IV. In the communication, dated 14.11.2008, the opposition division summoned the involved parties to attend oral proceedings on the 13.05.2009. A preliminary opinion with regard to Article 87 EPC, Article 123(2) EPC and Article 56 EPC was given in the annex of the summons. Furthermore, Article 123(2) was not fulfilled since the features "*order fulfilment system at the merchant server*" and "*wireless communication network*" were not explicitly and unambiguously disclosed in the patent application (D13).

The opposition division was of the opinion that the priority date was valid and thus D1 and D3 could only be considered for Article 54(3) EPC. But since D1 and D3 didn't disclose all features of claim 1, claim 1 was novel over both documents D1 and D3.

Document D2 disclosed an electronic wallet which is either located at the client or the server and contains all data necessary for an electronic financial transaction as disclosed by the contested patent and thus solved the same problem as the invention, namely storing, retrieving and managing all of a customer's electronic data. Since the remaining technical features of claim 1 merely specified a typical internet infrastructure comprising databases and server, the opposition division was of the opinion that claim 1 didn't fulfil the requirements of Article 56 EPC. Since the opponent didn't provide any detailed arguments for novelty and inventive step with regard to documents D4-D10, the opposition division was of the opinion that prima facie documents D4, D7 and D10 didn't seem to be relevant for assessing novelty (Article 54 EPC) and that prima facie documents D5, D6, D8 and D9 didn't seem to be relevant for assessing inventive step (Article 56 EPC).

- V. In a his letter of reply, dated 09.04.2009, the patentee cited passages from D13 (paragraph 7, line 34-35; paragraph 9, line 9-12; paragraph 23, line 27-30; paragraph 35, line 5-8; paragraph 53, line 44-47 and paragraph 61, line 33-52) and stated that the wording "*an order fulfilment system of the merchant*" unambiguously implied the feature "*order fulfilment system at the merchant server*" and that this feature therefore fulfilled the requirements of Article 123(2) EPC. With regard to the objected feature "*wireless communication network*" the patentee cited passages from D13 (paragraph 7, line 24-25 and line 33-34;

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paragraph 13, line 51-53; paragraph 15, line 4-8; paragraph 17, line 18-24; paragraph 23, line 27-30 and paragraph 66, line 19-26) and stated that the term "wireless communication device", and specifically "wireless telephone", used in these passages unambiguously disclose a "wireless communication network" and that thus this feature fulfils the requirements of Article 123(2) EPC. Furthermore, the main request was maintained and three auxiliary requests were filed.

- VI. In a his letter of reply, dated 16.04.2009, the opponent commented on the three auxiliary requests filed by the patentee with the letter, dated 09.04.2009. The opponent stated that the second auxiliary request does not fulfil the requirements of Article 123(2) EPC and that the first and third auxiliary requests do not fulfil the requirements of Article 123(3) EPC. The opponent further stated that the first and third auxiliary requests are not clear with regard to Article 84 EPC. The opponent is further of the opinion that all auxiliary requests (first, second and third) are not inventive with regard to Article 56 EPC.
- VII. Oral proceedings were held on the 13.05.2009. During Oral Proceedings the patentee filed a new first auxiliary request and a new second auxiliary request. The original first, second and third auxiliary requests, filed with letter of reply, dated 09.04.2009, were not maintained.
- VIII. The claim 1 of the main request reads as follows:

A method of operating a computer system for data management of an electronic transaction comprising:

receiving selection data identifying a product offered for purchase from a merchant in a transaction portal server coupled to a merchant server provided with a merchant check-out application that is in communication with a product database and an order fulfillment system at the merchant server from an interface-enabled communication device via a wireless communication network coupled to the transaction portal server;

providing product information data comprising information describing at least one aspect of the product to the interface-enabled communication device from the product database of the at the merchant server via the wireless communication network coupled to the transaction portal server;

receiving shipping details data comprising instructions related to shipping the

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product to a designated recipient by the merchant check-out application of the merchant server via the transaction portal server from an electronic wallet server associated with the transaction portal server and coupled to the payment processor;

receiving payment option data comprising information describing a desired means of payment for the product by the merchant check-out application of the merchant server from the interface-enabled communication device via the wireless communication network coupled to the transaction portal server;

transmitting payment authorization data to a the payment processor by the transaction portal server, wherein the payment authorization data comprises purchaser identifying data and merchant identifying data identifying the merchant;

the payment processor providing authorization to the electronic transaction portal of the transaction portal server; and

transmitting order information to the order fulfilment system at the merchant server via the merchant check-out application of the merchant server by the transaction portal server, wherein the order information comprises payment option data and shipping detail data.

- IX. The claim 1 of the new first auxiliary request, filed during oral proceedings at 13.05.2009, reads as follows (features removed from the main request are set **strikeout**, features added to the main request are set **bold**):

A method of operating a computer system for data management of an electronic transaction comprising:

receiving selection data identifying a product offered for purchase from a merchant in a transaction portal server coupled to a merchant server provided with a merchant check-out application that is in communication with a product database and an order fulfilment ~~system database of at the merchant server~~ from an interface-enabled communication device via a wireless communication network coupled to the transaction portal server;

providing product information data comprising information describing at least one aspect of the product to the interface-enabled communication device from the product database of the ~~at the merchant server~~ via the wireless communication network coupled to the transaction portal server;

receiving shipping details data comprising instructions related to shipping the product to a designated recipient by the merchant check-out application of the merchant server via the transaction portal server from an electronic wallet server associated with the transaction portal server and coupled to the payment

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processor;

receiving payment option data comprising information describing a desired means of payment for the product by the merchant check-out application of the merchant server from the interface-enabled communication device via the wireless communication network coupled to the transaction portal server;

transmitting payment authorization data to the payment processor by the transaction portal server, wherein the payment authorization data comprises purchaser identifying data and merchant identifying data identifying the merchant;

the payment processor providing authorization to the electronic transaction portal of the transaction portal server; and

transmitting order information to the order fulfillment system database at the merchant server via the merchant check-out application of the merchant server by the transaction portal server, wherein the order information comprises payment option data and shipping detail data.

- X. The claim 1 of the new second auxiliary request, filed during oral proceedings at 13.05.2009, reads as follows (features removed from the new first auxiliary request are set ~~strikeout~~, features added to this request are set **bold**):

A method of operating a computer system for data management of an electronic transaction comprising:

receiving selection data identifying a product offered for purchase from a merchant in a transaction portal server coupled to a merchant server provided with a merchant check-out application that is in communication with a product database and an order fulfillment database of at the merchant server from an interface-enabled communication device via a wireless communication network coupled to the transaction portal server;

providing product information data comprising information describing at least one aspect of the product to the interface-enabled communication device from the product database of the at the merchant server via the wireless communication network coupled to the transaction portal server;

receiving shipping details data comprising instructions related to shipping the product to a designated recipient by the merchant check-out application of the merchant server via the transaction portal server from an electronic wallet server associated with the transaction portal server and coupled to the payment processor;

receiving payment option data comprising information describing a desired means of payment for the product by the merchant check-out application of the

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merchant server from the interface-enabled communication device via the wireless communication network coupled to the transaction portal server;

transmitting payment authorization data to a the payment processor by the transaction portal server, wherein the payment authorization data comprises purchaser identifying data and merchant identifying data identifying the merchant;

the payment processor providing authorization to the electronic transaction portal of the transaction portal server; and

transmitting order information to the order fulfilment system database of at the merchant server via the merchant check-out application of the merchant server by the transaction portal server, wherein the order information comprises payment option data and shipping detail data.

Reasons for the decision

1 Admissibility of the opposition

The opposition is admissible because it meets all the requirements of Article 99(1) and 100 EPC and of Rules 1(1) and 55 EPC.

2 Main Request

2.1 Article 100(c) EPC and Article 123(2) EPC

The independent claim 1 contains subject-matter which extends beyond the content of the application as filed.

2.2 Claim 1

Claim 1 as granted specifies an "order fulfilment system at the merchant server". This feature, however, is not disclosed in the application as filed (document D13). D13 merely discloses "an order fulfilment system of the merchant" (paragraph 9, line 10-12 and paragraph 11, line 39-40 and claim 27) and "the merchants' product database and order-fulfilment facilities" (paragraph 53, line 44-47). Although paragraph 61 (line 1-2) discloses that "The portal 15 also transmits order information to the merchant 20" thereby possibly equating the term "merchant server" with "merchant", it still isn't enough to clearly disclose an order fulfilment system located at the server since all passages referring to the order fulfilment system only disclose that it is associated with the person "merchant".

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Specifically paragraph 53, line 44-47 discloses that *"the portal 15 is in communication with the product database and order fulfilment systems of a merchant via the check-out application (software) residing on the merchant server 20"* which clearly makes a distinction between the computer device (merchant server 20), and the person (merchant) thereby directly contradicting the disclosure of paragraph 61.

Therefore, the feature *"order fulfilment system at the merchant server"* of claim 1 of the main request is **not explicitly and unambiguously disclosed** and thus doesn't fulfil the requirements of Article 123(2) EPC.

2.3 Arguments of the patent proprietor

- 2.4 The patent proprietor is of the opinion that the term *"merchant"* refers to the technical device *"merchant server"* which represents the person *"merchant"* in the context of the opposed patent. He cites passages from D13 (paragraph 7, line 34-35; paragraph 9, line 9-12; paragraph 23, line 27-30; paragraph 35, line 5-8; paragraph 53, line 44-47 and paragraph 61, line 33-52) which disclose that the merchant is represented by a website and that the check-out application and the order fulfilment system are both in the possession of the merchant. Therefore, D13 discloses that the order fulfilment system is located at the merchant server.
- 2.5 The opposition division is of the opinion, as already stated in item 2.2 above, that the cited passages use the term *"merchant"* ambiguously which is specifically manifested in paragraphs 53 and 61. Therefore, the applicants arguments are **not convincing**.

3 New First Auxiliary Request

3.1 Article 123(3) EPC

The independent claim 1 contains subject-matter which extends the protection conferred.

In claim 1 of the first auxiliary request the term *"order fulfilment system at the merchant server"* was amended to *"order fulfilment database of the merchant"*. Since the *"merchant server"* is associated, amongst other servers, with the person *"merchant"*, a substitution of *"merchant server"* with the person *"merchant"* broadens the scope since the term now includes all servers of the person *"merchant"* such as the *"web site"* (paragraph 7, line 37), a *"web server"* (paragraph 34, line 56-57) and the product database (paragraph 9, line 11; implies that a database server program is running on a computer of the merchant). Therefore, the feature *"order fulfilment database of the merchant"* of claim 1 of the

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first auxiliary request extends the protection conferred and thus doesn't fulfil the requirements of Article 123(3) EPC.

3.2 Article 123(2) EPC

The feature "*a merchant check-out application that is in communication with...an order fulfilment database at the merchant server*" is not originally disclosed in D13. From document D13, it appears that the electronic wallet is in communication with the order fulfilment database (paragraph 61, line 36-39, "...the wallet to automatically complete the fields in the merchant's order fulfilment database..."), whereas the check-out application is in communication with the order fulfilment system (paragraph 53, line 44-47, "...the portal is in communication with the...order fulfilment systems of a merchant via the check-out application...").

Furthermore, D13 also doesn't disclose the location of the order fulfilment database but discloses in paragraph 61, line 38-39, "*the merchant's order fulfilment database*" which merely implies a logical association between the database and the person "*merchant*".

Therefore, the feature "*a merchant check-out application that is in communication with...an order fulfilment database at the merchant server*" of claim 1 of the main request is **not directly and unambiguously derivable** and thus doesn't fulfil the requirements of Article 123(2) EPC.

3.3 Arguments of the patent proprietor

- 3.4 With regard to Article 123(3) EPC, the patent proprietor is of the opinion that the term "*merchant*" is not broader than the term "*merchant server*" since it is essential that the server is in possession of the person "*merchant*".

The opposition division is of the opinion, as already stated in item 3.1 above, that the person "*merchant*" is in possession of multiple servers and thus amending the term "*merchant server*" to "*merchant*" violates Article 123(3) EPC.

- 3.5 With regard to Article 123(2) EPC, the patent proprietor cites paragraph 61, line 39 and paragraph 19, line 36-43 which both disclose "*the merchant's order fulfilment database*".

The opposition division is of the opinion that these passages, rather imply that the term "*merchant*" refers rather to the person and not to the server (see also item 3.2 above).

4 New Second Auxiliary Request

The second auxiliary request is not admissible since it **prima facie** didn't fulfil the

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requirements of Article 123(2) EPC because no basis in the description for the features "*a merchant check-out application that is in communication with...an order fulfilment database*" and the feature "*order fulfilment database at the merchant server*".

Article 106 Decisions subject to appeal

- (1) An appeal shall lie from decisions of the Receiving Section, Examining Divisions, Opposition Divisions and the Legal Division. It shall have suspensive effect.
- (2) A decision which does not terminate proceedings as regards one of the parties can only be appealed together with the final decision, unless the decision allows a separate appeal.
- (3) The right to file an appeal against decisions relating to the apportionment or fixing of costs in opposition proceedings may be restricted in the Implementing Regulations.

Rule 97 Appeal against apportionment and fixing of costs

- (1) The apportionment of costs of opposition proceedings cannot be the sole subject of an appeal.
- (2) A decision fixing the amount of costs of opposition proceedings cannot be appealed unless the amount exceeds that of the fee for appeal.

Rule 98 Surrender or lapse of the patent

The decision of an Opposition Division may be appealed even if the European patent has been surrendered in all the designated Contracting States or has lapsed in all those States.

Article 107 Persons entitled to appeal and to be parties to appeal proceedings

Any party to proceedings adversely affected by a decision may appeal. Any other parties to the proceedings shall be parties to the appeal proceedings as of right.

Article 108 Time limit and form

Notice of appeal shall be filed in accordance with the Implementation Regulations, at the European Patent Office within **two months** of notification of the decision. Notice of appeal shall not be deemed to have been filed until the fee for appeal has been paid. Within **four months** of notification of the decision, a statement setting out the grounds of appeal shall be filed in accordance with the Implementing Regulations.

Further information concerning the filing of an appeal

- (a) The appeal is to be filed with the European Patent Office either at its seat in Munich, at its branch at The Hague or at its Berlin sub-office. The postal addresses are as follows:

(i) European Patent Office
80298 MUNICH
GERMANY

(ii) European Patent Office
Postbus 5818
2280 HV Rijswijk
NETHERLANDS

(iii) European Patent Office
10958 BERLIN
GERMANY

Fax: +49 89 2399-4465

Fax: +31 70 340-3016

Fax: +49 30 259 01-840

- (b) The notice of appeal must contain the name and address of the appellant in accordance with the provisions of Rule 41(2)(c) EPC, an indication of the decision impugned, and a request defining the subject of the appeal. In the statement of grounds of appeal the appellant shall indicate the reasons for setting aside the decision impugned, or the extent to which it is to be amended, and the facts and evidence on which the appeal is based (R. 99(1) and (2) EPC). The notice of appeal and any subsequent submissions stating the grounds for appeal must be signed (R. 50(3) EPC).

- (c) Notice of appeal can be filed in accordance with Rule 1 and Rule 2(1) EPC, by delivery by hand, by post, or by technical means of communication. The filing has to comply with the details and conditions and, where appropriate, any special formal or technical requirements laid down by the President of the European Patent Office (R. 99(3) EPC).
- (d) The fee for appeal is laid down in the Rules relating to Fees. The schedule of fees and expenses of the EPO or a reference to the current version is regularly published in the Official Journal of the European Patent Office under the heading "Guidance for the payment of fees, expenses and prices". It is also published on the EPO Internet page under <http://www.epo.org/Patents/Grant-procedure/Filing-an-application/costs-and-fees.html>.

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Pat. bank



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Application No. / Patent No. 00 204 234.9 - 2211 / 1107198 /	Ref. F284-099	Date 03.06.2009
Proprietor CITIBANK, NA		

Provision of a copy of the minutes in accordance with Rule 124(4) EPC

The attached copy of the minutes of the oral proceedings is sent to you in accordance with Rule 124(4) EPC.



Beuschel, Helene
Formalities Officer
Tel. No.: +49 89 2399 - 2971

Enclosure(s): Copy of the minutes (Form 2309)



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Application No.:

00 204 234.9

Patent No.:

EP-B-1107198

Minutes of the oral proceedings before the OPPOSITION DIVISION

The proceedings were public.

Proceedings opened on 13.05.2009 at 09:05 hours

Present as members of the opposition division:

Chairman:	Krischer, Stefan
1st member:	Milasinovic, Goran
2nd member:	Königer, Axel
Minute writer:	Königer, Axel

Present as or for the party or parties:

- For the Proprietor(s): CITIBANK, NA
Mr. Kitzler, accompanied by Mr. Randel as assistant
- For the Opponent 1: Swisscom (Schweiz) AG
Mr. Welland

The identity of the person/s (as well as, if applicable, that of the witness or witnesses) and, where necessary, the authorisation to represent/authority to act were checked.

Essentials of the discussion and possible relevant statements of the parties:



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- 1 The chairman opened the oral proceedings before the opposition division at 09:05h and summarized the requests on file being: revocation of the patent in its entirety by the opponent and maintenance of the patent as granted or in amended form in accordance with auxiliary requests 1-3 (filed with letter of 09.04.2009) by the patent proprietor.
- 2 The chairman started the discussion focusing on the objections with respect to Article 123(2) EPC (see in particular point 6.4 of the annex to the summons for oral proceedings).
- 3 Mr. Weiland repeated the arguments of the opponent with respect to unallowable amendments (Article 123(2) EPC). He basically objected that the originally filed application documents do not disclose that the order fulfilment system is located at the merchant server (20), therefore the feature "the order fulfilment system at the merchant server (20)" of claim 1 as granted would not fulfill the requirements of Article 123(2) EPC. He stressed that the originally filed description refers only at 6 locations to the order fulfilment system, namely [9], [11] l.39 ff., [19] l.37 ff., [53] l.44-48, original claim 27 and 53 (l.24-31). All these passages do merely refer to an "order fulfilment system of the merchant". There is no explicit disclosure that the order fulfilment system is located at the merchant server. According to the paragraph [53] it is merely disclosed that the "check-out application is residing on the merchant server (20)". Furthermore Fig. 2 shows the merchant server (20) but there is no hint to an order fulfilment system.
Besides that the opponent noted that according to his opinion the order fulfilment system, would refer to the non-technical part of how to ship the goods to the purchaser etc., thus this feature would not be related to a server at all.
- 4 Mr Kitzler responded for the patent proprietor by leading the discussion first to having a general view of underlying the concept of the present invention. He presented copies of Figs. 1 and 2 of the patent as granted to the opponent and the opposition division in order to explain the invention, that is concerning a system realizing e-commerce and providing an electronic marketplace to customers having mobile terminals. Both merchants and customers can take part in that system, such that in the end customers can use their mobile phone for purchasing items from different merchants (in this respect he referred to the transaction portal server (14) with several electronic transaction portals (15) and to



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the description [16] col 5/1.9-18 and [34] 1.51 ff.).

The opponent marked that the merchant is represented by a merchant server (20), meaning that the person or organisation behind the merchant is represented by a technical device in form of a (merchant) server. He stressed that the whole text is always referring to the underlying technical devices, whenever merchant or merchant server is written. He pointed to the following passages, which have to be read in context, namely [7] 1.34-37, [9] 1.9-12, [23] 1.27-30, [35] 1.5-8, [53] 1.44-47, [61] 1.33-39 and 1.48-62. From these passages it is clear that the merchant is represented by a website and that the website is placed on a server. Further it is clear that the product database, the check-out application and the order fulfilment system are in possession of the merchant and it is explained how these components communicate with each other. It is also disclosed that the "merchant (20) receives data [...]" which is crucial for the functioning of the invention, namely information that carries technical parameters that are necessary to establish communication and execute a transaction and purchase in accordance with the invention.

In summary it follows according to the opinion of the patent proprietor that the "merchant" is identical to the "merchant server (20)".

- 5 Being asked by the chairman about what the order fulfilment system actually does, the opponent replied by pointing to Fig. 2. In this Fig. 2 the top and bottom arrows have not to be seen as being within the claimed system, since they refer merely to marketing channels. The order fulfilment is dealt with within the technical system shown in the center of Fig. 2. Further the supply chain is influenced by the order fulfilment system. The opponent also referred to [61] 1.38-39 and pointed to the order fulfilment database which is residing the order fulfilment system. All that would again make clear that "merchant" and "merchant server (20)" are identical.
- 6 The opponent replied by pointing to claim 53 as originally filed, where it is stated in lines 24 following that "a merchant server is associated with a merchant" and some lines below it is referred to "an order fulfilment system of the merchant". This passage makes clear to the reader according to the opinion of the opponent that the merchant server should not be confused with the merchant and that the originally application text does well distinguish between the merchant as organisational entity on the one hand and the merchant server on the other hand. With this in mind the interpretation of the merchant being identical with merchant



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server (20) does not make any sense for the reader.

The opponent did also point to the following passages of the description of the patent documents as originally filed [53] 1.34 ff and 1.44 ff., [35] 1.5 ff.. All these passages do explicitly refer merely to "an order fulfilment system of the merchant" and they allow interpretations where the merchant and the merchant server are not the same entity.

- 7 The patent proprietor pointed again to the context of the world of Internet solutions, where data functionalities are placed outside on a remote place (websites, databases, filesystems, etc.) namely a server. Whereby all software applications are represented on a server, the server being implemented by one or several computers. The server is to be seen as a functionality being provided on a computer. The merchant is represented by such a server solution. In this context the only technical place which makes sense to place the functionality is the server. Therefore the items (i.e. order fulfilment system) can only be located on the server. The opponent stressed again, that all the context of the patent in suit is in the technical area.
- 8 Being asked by the entrusted examiner whether it matters where specific functionalities or software is located the patent proprietor answered that it is not important whether there are one or several server machines. The essential fact is that "the server" is in possession of the merchant.
He concluded by stating that it is unambiguously derivable from the text that merchant and merchant server are identical.
- 9 The opponent concluded by noting that Article 123(2) EPC has to be applied strictly and stressed that claim 53 clearly distinguished between merchant and merchant server (20).
- 10 During a break the opposition division deliberated from 9:49 to 10:05 h.
- 11 The chairman announced the opinion of the opposition division that claim 1 as granted does not fulfil the requirements of Article 123(2) EPC. Since it can not be directly and unambiguously derived from the originally filed application documents that the order fulfilment system is located at the merchant server (20). This is because different passages of the description point into different directions.



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- 12 The patent proprietor went then on to the presentation of his first auxiliary request as filed with letter of 09.04.2009, where the critical term was replaced by "order fulfilment system of the merchant". Since the opponent sees no difference in the meaning of the terms "at the merchant server" and "of the merchant" this replacement would not contravene Article 123(3) EPC. Even if the term "of the merchant" would at a first glance look broader, this would be an illusion since it is essential that the merchant is in possession of the server, thus this expression means the same as the expression "at the merchant server".
- 13 The opponent replied that the deletion of the feature "server" clearly broadens the scope and the claim and thus contravenes Article 123(3) EPC. Further he pointed to an additional amendment namely the introduction of the words "at the merchant server (20)" in claim 1, which contravenes Article 123(2) EPC, because now the merchant server is in communication with a product database which is not originally disclosed. Further the opponent noted that this amendment is not occasioned by a ground of opposition. Finally the opponent requested that further auxiliary requests should not be allowed since they would be late filed.
- 14 The patent proprietor responded that the motivation for the amendment was to overcome the previous objections. He further pointed to [53] I.44-47. The patent proprietor further stated that the request of the opponent to neglect further auxiliary requests can not be followed since it is also late filed and that new circumstances have arrived during this oral proceedings which make it necessary for the patent proprietor to address those objections.
- 15 The chairman paused the oral proceedings from 10:17 to 10:28 h.
- 16 After deliberation the chairman announced the opinion of the opposition division that the present first auxiliary request does not fulfill the requirements of Article 123(3) EPC and that the patent proprietor will be given time to prepare one further new auxiliary request in order to overcome the objections raised during the oral proceedings.
- 17 The proceedings were paused from 10:30 to 11:01 h in order to give the patent proprietor time to prepare a new auxiliary request.



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- 18 The opponent presented a new first auxiliary request replacing the original first, second and third auxiliary requests on file. As basis for the amendments the referred to [19] I.40-43, [23] I.27-30 and [61] I.34 ff.. The opponent noted in this context that the order fulfilment database has to be seen as a subpart of the order fulfilment system, thus further limiting the subject-matter of the claim 1.
- 19 The opponent referred to the board of appeal decisions T1048/99, /120/03 and T358/06, which all express that amendments being based on features taken from the description make during an oral proceedings are not allowable. The opponent further noted that the deletion of the order fulfilment server is to be seen as a violation of Article 123(3) EPC and there is no original disclosure for "the check-out application being in communication with an order fulfilment database" (Article 123(2) EPC).
- 20 With respect to the cited board of the appeal decisions the representative of the patent proprietor stated that both the patent proprietor and the opposition division do not have the whole context of these decisions available and that other decisions pointing into other directions might exist. Thus neither the patent proprietor nor the opposition division is in a position to form an opinion of that topic. The opponent again stressed that the new auxiliary request is narrowing down the claimed subject-matter since the order fulfilment database is a part of the order fulfilment system.
- 21 After being asked by the chairman of the opposition division for a basis with respect to the exact location of the order fulfilment database the patent proprietor responded by pointing to [61] I.39 and [19] I.36-43. Further he stated that it is evident from the common way of proceeding in this kind of technology that the order fulfilment database is a part of the order fulfilment system. Finally it is also evident that the order fulfilment database has to be on the (merchant) server. This is implicitly disclosed from the application documents.
- 22 The chairman asked also for a basis concerning the "communication of the check-out application with the order fulfilment database". The patent proprietor stated that this feature is also implicit by the definition of the information flow as defined in the description.



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- 23 The opponent summarized his position that both the (order fulfilment) system and the (merchant) server can not be deleted, since this would contravene Article 123(3) EPC and that there is no basis for the "communication of the check-out application with the order fulfilment database" (Article 123(2) EPC).
- 24 The opposition division expressed its opinion that the new first auxiliary request did not fulfill the requirements of Article 123(3) EPC since the deletion of the "order fulfilment system at the merchant server" broadened the scope of protection. It did also not fulfill the requirements of Article 123(2) EPC since the communication of the check-out application with the order fulfilment database was not originally disclosed.
- 25 The patent proprietor indicated that he is prepared to change back from "of the merchant" to "at the merchant server" in the first auxiliary request and asked furthermore for a short break.
- 26 The proceedings were paused from 11:30 to 11:39 h.
- 27 The chairman of the opposition division stated that the proposed amendment (coming back to the formulation "at the merchant server") will probably not be accepted, since this would prima facie cause a violation of Article 123(2) EPC (no basis for communication of check-out application and order fulfilment database and no basis that order fulfilment database is at the merchant server).
- 28 The patent proprietor repeated his position that it would be impossible to accept that the order fulfilment database is not a subpart of the order fulfilment system. Further it is also impossible to arrive at an interpretation that the order fulfilment database is not at the merchant server. The patent proprietor still is of the opinion that the terms merchant and merchant server have to be interpreted as being identical.
- 29 The opponent replied that it is not originally disclosed where the order fulfilment database is located. Further there is no disclosure about the communication of the check-out application with the order fulfilment database.
- 30 Although the opposition division had already indicated their position on the



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proposed amendment of the new first auxiliary request the patent proprietor filed an amended request ("of the merchant" replaced by "at the merchant server") as new second auxiliary request (the filed request being named: "modified 11:37 h").

- 31 The chairman repeated that the argument given before would apply to that second auxiliary request before he asked the parties for final submissions.
- 32 The oral proceedings were paused by the chairman for final deliberation from 11:49 to 12:13 h.
- 33 After the break, the chairman stated that the second auxiliary request is not admissible, because of the arguments given already before (Article 123(2) EPC is prima facie not fulfilled). Finally the chairman announced the decision that the opposed patent is revoked, since the patent as granted violates Article 123(2) EPC. Since the new first auxiliary request does not fulfill the requirements of Articles 123(3) EPC and 123(2) EPC and the new second auxiliary request is not admitted for prima facie violating Article 123(2) EPC, the patent can also not be maintained in amended form.
- The parties were informed that the written decision and the minutes will be distributed in due time. And that the decision is open to appeal. The proceedings were closed by the chairman at 12:15 h.

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After deliberation of the opposition division,

- the chairman announced the following decision:

"The European patent is revoked."

Regarding the reasons for the decision, the chairman referred to:

Article 101(2) EPC, first sentence: the following ground(s) for opposition mentioned in Article 100 EPC prejudice(s) the maintenance of the patent as granted.

The division's opinion is that, even taking into consideration the amendments made by the proprietor of the patent during the opposition proceedings, the patent does not meet the requirements of the Convention (Article 101(3)(b) EPC)

The party/parties was/were informed that the minutes of the oral proceedings and a written reasoned decision (including an indication of the possibility of appeal) will be notified to him/them as soon as possible.

The chairman closed the oral proceedings on 13.05.2009 at 12:15 hours.

signed:

Krischer, Stefan

Chairman

Enclosure(s):

First and second auxiliary requests as filed during oral proceedings



signed:

Königer, Axel

Minute Writer

30284
New First
First Auxiliary Request

1

Claims

1. A method of operating a computer system for data management of an electronic transaction comprising: receiving selection data identifying a product offered for purchase from a merchant (21) in a transaction portal server (14) coupled to a merchant server (20) provided with a merchant check-out application ~~at the merchant server (20)~~ that is in communication with a product database and an order fulfillment *Database* system ~~at of the merchant server (20)~~ from an interface-enabled communications device (10) via a wireless communication network (30) coupled to the transaction portal server (14);

providing product information data comprising information describing at least one aspect of the product to the interface-enabled communications device (10) from the product database of the at the merchant server (20) via the wireless communication network (30) coupled to the transaction portal server (14);

receiving shipping detail data comprising instructions related to shipping the product to a designated recipient by the merchant check-out application of the merchant server (20) via the transaction portal server (14) from an electronic wallet server (16) associated with the transaction portal server (14) and coupled to a payment processor (18);

receiving payment option data comprising information describing a desired means of payment for the product by the merchant check-out application of the merchant server (20) from the

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interface-enabled communications device (10) via the wireless communication network (30) coupled to the transaction portal server (14); transmitting payment authorization data to a the payment processor (18) by the transaction portal server (14), wherein the payment authorization data comprises purchaser identifying data and merchant identifying data identifying the merchant;

the payment processor (18) providing authorization to the electronic transaction portal (15) of the transaction portal server (14); and

transmitting order information to the order fulfillment *database* ~~system at of the merchant server (20)~~ via the merchant check-out application of the merchant server (20) by the transaction portal server (14), wherein the order information comprises payment option data and shipping detail data.

24. A computer system for data management of an electronic transaction comprising:

a transaction portal server (14) coupled to a merchant server (20) provided with a merchant check-out application ~~at the merchant server (20)~~ that is in communication with a product database and an order fulfillment *database* ~~system at of the merchant server (20)~~ wherein the transaction portal server (14) is adapted for receiving selection data identifying a product offered for purchase from a merchant (21) in the transaction portal server (14) from an interface-enabled communications device (10) via a wireless communication network (30) coupled to the

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transaction portal server (14);

wherein the merchant server (20) is adapted for providing product information data comprising information describing at least one aspect of the product to the interface-enabled communications device (10) from the product database at the merchant server (20) via the wireless communication network (30) coupled to the transaction portal server (14);

wherein the merchant check-out application of the merchant server (20) is adapted for receiving shipping detail data comprising instructions related to shipping the product to a designated recipient via the transaction portal server (14) from an electronic wallet server (16) associated with the transaction portal server (14) and coupled to a payment processor (18);

wherein the merchant check-out application of the merchant server (20) is adapted for receiving payment option data comprising information describing a desired means of payment for the product from the interface-enabled communications device (10) via the wireless communication network (30) coupled to the transaction portal server (14);

wherein the transaction portal server (14) is further adapted for transmitting payment authorization to a payment processor (18), wherein the payment authorization comprises purchaser identifying data and merchant identifying data identifying the merchant;

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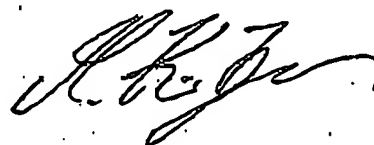
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New First Auxiliary Request

wherein the payment processor (18) is adapted for providing authorization to the electronic transaction portal (15) of the transaction portal server (14); and

wherein the transaction portal server (14) is further adapted for transmitting order information to the order fulfillment ^{database} system ~~at~~ of the merchant server (20) via the merchant check-out application of the merchant server (20), wherein the order information comprises payment option data and shipping detail data.

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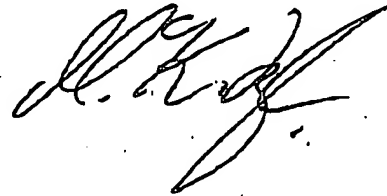


New
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New 30284
First
First Auxiliary Request

modified ¹ ~~to~~ Apr 11:37

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Claims

1. A method of operating a computer system for data management of an electronic transaction comprising: receiving selection data identifying a product offered for purchase from a merchant (21) in a transaction portal server (14) coupled to a merchant server (20) provided with a merchant check-out application ~~at the merchant server (20)~~ that is in communication with a product database and an order fulfillment ~~system at the merchant server (20)~~ ^{database} ~~server (20)~~ from an interface-enabled communications device (10) via a wireless communication network (30) coupled to the transaction portal server (14);

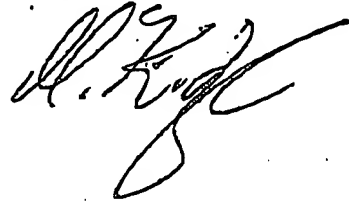
providing product information data comprising information describing at least one aspect of the product to the interface-enabled communications device (10) from the product database of the at the merchant server (20) via the wireless communication network (30) coupled to the transaction portal server (14);

receiving shipping detail data comprising instructions related to shipping the product to a designated recipient by the merchant check-out application of the merchant server (20) via the transaction portal server (14) from an electronic wallet server (16) associated with the transaction portal server (14) and coupled to a payment processor (18);

receiving payment option data comprising information describing a desired means of payment for the product by the merchant check-out application of the merchant server (20) from the

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interface-enabled communications device (10) via the wireless communication network (30) coupled to the transaction portal server (14); transmitting payment authorization data to a the payment processor (18) by the transaction portal server (14), wherein the payment authorization data comprises purchaser identifying data and merchant identifying data identifying the merchant;

the payment processor (18) providing authorization to the electronic transaction portal (15) of the transaction portal server (14); and

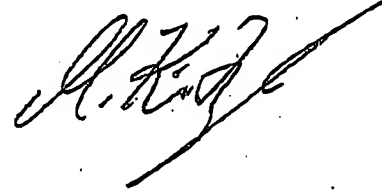
transmitting order information to the order fulfillment *database* ~~system at the merchant server (20)~~ ^{server (20)} via the merchant check-out application of the merchant server (20) by the transaction portal server (14), wherein the order information comprises payment option data and shipping detail data.

24. A computer system for data management of an electronic transaction comprising:

a transaction portal server (14) coupled to a merchant server (20) provided with a merchant check-out application ~~at the merchant server (20)~~ ^{server (20)} that is in communication with a product database and an order fulfillment *database* ~~system at the merchant server (20)~~ ^{server (20)} wherein the transaction portal server (14) is adapted for receiving selection data identifying a product offered for purchase from a merchant (21) in the transaction portal server (14) from an interface-enabled communications device (10) via a wireless communication network (30) coupled to the

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transaction portal server (14);

wherein the merchant server (20) is adapted for providing product information data comprising information describing at least one aspect of the product to the interface-enabled communications device (10) from the product database at the merchant server (20) via the wireless communication network (30) coupled to the transaction portal server (14);

wherein the merchant check-out application of the merchant server (20) is adapted for receiving shipping detail data comprising instructions related to shipping the product to a designated recipient via the transaction portal server (14) from an electronic wallet server (16) associated with the transaction portal server (14) and coupled to a payment processor (18);

wherein the merchant check-out application of the merchant server (20) is adapted for receiving payment option data comprising information describing a desired means of payment for the product from the interface-enabled communications device (10) via the wireless communication network (30) coupled to the transaction portal server (14);

wherein the transaction portal server (14) is further adapted for transmitting payment authorization to a payment processor (18), wherein the payment authorization comprises purchaser identifying data and merchant identifying data identifying the merchant;

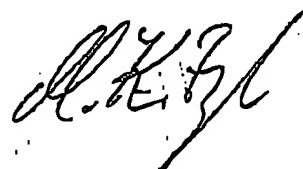
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wherein the payment processor (18) is adapted for providing authorization to the electronic transaction portal (15) of the transaction portal server (14); and

wherein the transaction portal server (14) is further adapted for transmitting order information to the order fulfillment ^{database at} ~~system of~~ the merchant ^{server (20)} ~~server (20)~~ via the merchant check-out application of the merchant server (20), wherein the order information comprises payment option data and shipping detail data.

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